

** E-filed on 4/24/09 **

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

VIACOM INTERNATIONAL, INC., ET AL.,
Plaintiffs,
v.
YOUTUBE, INC., ET AL.,
Defendant.

Case No. C 08-80211 MISC. JF(PVT)
ORDER¹ OVERRULING OBJECTION
TO MAGISTRATE JUDGE'S ORDER
DATED JANUARY 14, 2009

[Docket No. 20]

I. INTRODUCTION

BayTSP, a non-party, objects to the order of Magistrate Judge Trumbull dated January 14, 2009 requiring BayTSP to produce certain documents subject to a subpoena obtained by YouTube in connection with an action pending in another district. BayTSP argues that the order was clearly erroneous or contrary to law. The Court concludes that the order was not clearly erroneous or contrary to law in light of the evidence and arguments presented by the parties to Judge Trumbull. Accordingly, the objection will be OVERRULED.

II. LEGAL STANDARD

Where, as here, the magistrate judge's ruling addresses a non-dispositive matter, the district judge will modify or set aside "any portion of the magistrate judge's order found to be

¹ This disposition is not designated for publication in the official reports.

1 clearly erroneous or contrary to law.” Fed. R. Civ. P. 72(a); *see also* 28 U.S.C. § 636(b)(1)(A).

2 III. DISCUSSION

3 For the purposes of discovery, the Viacom action has been consolidated with a class
4 action filed against YouTube on May 4, 2007, reportedly on behalf of every copyright holder in
5 the world.² The documents requested from BayTSP potentially will reveal evidence supporting
6 YouTube’s defense in both the class action and the instant suit against Viacom. Where “a
7 district court whose only connection with a case is supervision of discovery ancillary to an action
8 in another district should be especially hesitant to pass judgment on what constitutes relevant
9 evidence thereunder. Where relevance is in doubt ... the court should be permissive.” *Gonzales v.*
10 *Google, Inc.*, 234 F.R.D. 674, 681 (N.D.Cal. 2006) citing *Truswal Systems Corp. V. Hydro-Air*
11 *Engineering, Inc.*, 813 F.2d 1207, 1211-12 (Fed. Cir. 1987). Despite this general principle that
12 “hired” district courts be permissive, Judge Trumbull did not grant unlimited access to BayTSP
13 documents. Rather, her order clearly balanced the relevance of the evidence and the burden on
14 the producing party.

15 In order to limit the burden on BayTSP, Judge Trumbull’s order appropriately requests
16 that BayTSP and YouTube work together to limit the scope of production and agree to an
17 appropriate format. January 14 Order at 11. Specifically, BayTSP is directed to provide YouTube
18 with a client list from which YouTube will select the clients from which it seeks documents and
19 then work with the clients themselves under appropriate protective orders. The order also
20 requires that YouTube defray the costs of producing the documents. Order at 10. BayTSP does
21 not contend that all of its client relationships are confidential or explain how confidentiality is
22 critical to its business operation.³ A protective order should be adequate to address any
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25 ² The putative class action mirrors the claims in the instant Viacom suit. *See The Football*
26 *Association Premier League Limited, et al., v. YouTube, Inc. Et al.*, Case no. 07-cv-3582 LLS
(FMx) (S.D.N.Y.) Opposition at 2-3. January 14 Order at 3 n.4.

27 ³ In contrast, Google provided its privacy policy for investigation and analysis to aid the
28 court in determining the burden on user trust that would result from its providing user
information. *Google*, 234 F.R.D. at 683-684.

1 confidentiality concerns BayTSP may have.

2 BayTSP's status as a non-party to the underlying case does not affect the outcome.
3 BayTSP's service is tracking and enforcement of copyrights. It is used by many copyright holders
4 to regulate copyrighted material. Based on the information provided regarding BayTSP's unique
5 purpose, capabilities, and clients, it is not inappropriate for YouTube to seek documents from
6 BayTSP that will assist it in defending the underlying lawsuit.

7 The January 14 Order references the three-prong test of Fed R. Civ. Pro. 26 and applies it
8 correctly. The result neither deprives a party of discovery that is reasonably necessary to afford a
9 fair opportunity to defend and prepare the case nor permits redundant or disproportionate
10 discovery.

11 Accordingly, the Court concludes that Judge Trumbull's order was not clearly erroneous
12 or contrary to law. Accordingly, the objection is OVERRULED.

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14 IT IS SO ORDERED.

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16 DATED: April 24, 2009

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JEREMY FOGEL
United States District Judge

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